

## Affirm Merchant Portal Terms of Service

Last Updated: July 31, 2020

These Merchant Portal Terms of Service are entered into between Affirm, Inc. (including its subsidiaries, affiliates, agents, and assigns) and You ("You" or "Your"), as the authorized agent of a merchant ("Merchant") who partners with Affirm to offer customers the option to finance transactions through Affirm's platform (the "Terms").

These Terms are to be read in conjunction with the respective Merchant Agreement with respect to Affirm's Services, as entered into by and between Merchant and Affirm ("Agreement").

**1. Merchant Portal Overview.** The Affirm Merchant Portal ("Portal") is provided by Affirm for the purpose of providing merchants with access to information about Customer transactions with Merchant financed through the use of Affirm's platform. Within the Portal, You can view Your transaction analytics, manage charges, view settlement reports, access Your API keys, and more.

**2. Merchant's Representations and Warranties.**

**2.1.** By creating an account to use the Portal, You represent that (i) You are the authorized agent of a Merchant; (ii) all information that You provide to Affirm in connection with Your access to and use of the Portal is true, accurate and complete to the best of Your knowledge and belief; (iii) You have all rights and authority necessary to provide any data or other information You provide hereunder; and (iv) Your activities in connection with the use of customer information contained in the Portal will be performed in compliance with all relevant laws and Your Privacy Policy.

**2.2.** You also agree that for each individual authorized by Affirm to access the Portal, that You shall: (i) take such actions as are necessary to maintain the confidentiality of, and prevent the unauthorized use of, each password to the Portal; (ii) immediately notify Affirm in writing if Merchant determines, or has reason to believe, that an unauthorized party has gained access to a password to Portal; and, (iii) that Merchant is solely responsible for all activity arising from access to, use of, or any other act or omission with respect to the Portal, whether or not authorized by Merchant.

**3. Use of the Merchant Portal**

**3.1. Portal Access.** You can access the Portal by using the credentials provided by Affirm. The credentials provided by Affirm are for Your use only as the authorized agent of Merchant and may not be provided to any third party. Credentials must be kept confidential. Access to the Portal as well as actions performed may be monitored or logged by Affirm for security reasons and for customer relationship purposes.

**3.2. Privacy.** The Portal allows access to certain information about individuals who have financed purchases with Merchant using the Services ("Customer Information"). This information may be protected by various federal and state laws that govern the processing, collection, use, and sharing of information that relates to an individual. You agree:

- (a) to comply with all applicable laws regarding the processing of Customer Information;
- (b) to access and use Customer Information in compliance with the Privacy Policy that Merchant discloses to its customers, and any other commitments or disclosures that Merchant has made regarding the privacy of Customer Information;
- (c) to keep confidential all Customer Information viewed or accessed through Portal, and to disclose that information only in the instances stated in Merchant's Privacy Policy;
- (d) to protect the Customer Information with the same degree of care that You use to protect the confidentiality of Merchant's own confidential information (but not less than reasonable care);

(e) to export information from Portal only where necessary to achieve a purpose for which You are authorized to act by Merchant.

**3.3. Prohibitions.** You shall not:

(a) engage in any activities in connection with the Portal that violate any applicable law, statute, regulation, or ordinance or breach this Agreement or any other agreement or policy that Merchant has with Affirm;

(b) provide false, inaccurate, fraudulent, or misleading information through the Portal;

(c) use any device, software, routine, file, or other tool or technology, including but not limited to any viruses, trojan horses, worms, time bombs, or cancelbots, intended to damage or interfere with the Portal or to surreptitiously intercept or expropriate any data from the Portal;

(d) use any robot, spider, scraper or other automated means to access the Portal for any purpose without Affirm's express written permission;

(e) enter into Affirm's systems without authorization, or misuse passwords or credentials;

(f) take any action that imposes an unreasonable or disproportionately large load on Affirm's infrastructure, including but not limited to denial of service attacks, "spam," or any other such unsolicited overload technique; or

(g) use the data accessible via the Portal for any other purpose than to administer the customer relationship as foreseen by these Terms and the Agreement.

**3.4. Security** You agree to notify Affirm promptly upon becoming aware of any suspected compromise of Your access credentials or other suspected unauthorized access of the Portal.

**4. Copyright, Trademark, and Ownership.** All of the content displayed on the Portal including, without limitation, text, graphics, photographs, images, moving images, sound, and illustrations ("Content"), is owned by Affirm, its licensors, agents or its content providers. All elements of the Portal, including, without limitation, the general design, Affirm's trademarks, service marks, trade names (including the Affirm's name, logos, the Website name, App name, the Website design and the App design), and other Content, are protected by trademark, copyright, moral rights, trademark and other laws relating to intellectual property rights. The Portal may only be used for the intended purpose for which it is being made available. You may not use, copy, reproduce, republish, upload, post, transmit, distribute, or modify the Content or the Affirm's trademarks in any way, including in advertising or publicity pertaining to distribution of materials on the Portal, without Affirm's prior written consent. The use of Affirm trademarks on any other Website is not permitted. Affirm prohibits the use of Affirm trademarks as a "hot" link on or to any other Website unless establishment of such a link is approved in writing in advance. The Portal, its Content, and all related rights shall remain the exclusive property of Affirm or its licensors unless otherwise expressly agreed in writing. You will not remove any copyright, trademark or other proprietary notices from material found on the Portal.

**5. Disclaimers.**

**5.1.** YOUR USE OF THE PORTAL IS AT YOUR OWN RISK. THE INFORMATION, MATERIALS, PRODUCTS AND THE PORTAL CONTENT PROVIDED ON, THROUGH, OR IN CONNECTION WITH THE PORTAL OR OTHERWISE PROVIDED BY US ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY, FREEDOM FROM COMPUTER VIRUS, OR WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AFFIRM HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PORTAL. AFFIRM DOES NOT REPRESENT OR WARRANT THAT THE PORTAL OR ANY INFORMATION AFFIRM PROVIDES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE PORTAL ARE FREE OF VIRUSES

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**5.2.** NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM AFFIRM OR THROUGH AFFIRM'S WEBSITE, PRODUCTS AND PORTAL WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

## **6. Limitations of Liability**

AFFIRM DOES NOT ASSUME ANY RESPONSIBILITY FOR AND WILL NOT BE LIABLE, FOR ANY DAMAGE TO OR ANY VIRUS THAT MAY INFECT YOUR COMPUTER, EQUIPMENT, OR OTHER PROPERTY CAUSED BY OR ARISING FROM YOUR ACCESS TO, USE OF, OR BROWSING THIS WEBSITE, OR YOUR DOWNLOADING OF OR ACCESSING ANY MATERIALS FROM THE PORTAL. IN NO EVENT WILL AFFIRM, OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AFFILIATES, AGENTS, SUCCESSORS OR ASSIGNS, NOR ANY PARTY INVOLVED IN THE CREATION, PRODUCTION OR TRANSMISSION OF THE PORTAL, BE LIABLE TO YOU OR ANYONE ELSE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM LOST PROFITS, LOST DATA OR BUSINESS INTERRUPTION) ARISING OUT OF THE USE, INABILITY TO USE, OR THE RESULTS OF USE OF THE PORTAL, ANY WEBSITES LINKED TO THE PORTAL, OR THE MATERIALS, INFORMATION, PRODUCTS OR PORTAL CONTAINED ON OR PROVIDED IN CONNECTION WITH THE PORTAL, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR ANY OTHER LEGAL THEORY AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS OF LIABILITY DO NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

IN THE EVENT OF ANY DISSATISFACTION OR PROBLEM WITH THE PORTAL OR ANY CONTENT, YOU AGREE THAT YOUR SOLE REMEDY IS TO CEASE USING THE PORTAL OR THE CONTENT. IN NO EVENT SHALL AFFIRM'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE EXCEED THE GREATER OF TWENTY FIVE DOLLARS (U.S. \$25.00).

**6.1. Indemnity.** Merchant shall indemnify and hold harmless Affirm from any and all liabilities, costs, and expenses, including reasonable attorneys' fees, related to or in connection with (i) Your use of the Portal; (ii) Your violation of any term or condition of these Terms, including without limitation, Your breach of any of the representations and warranties; (iii) Your violation of any third-party rights, including without limitation any right of privacy, publicity rights or intellectual property rights; (iv) Your violation of any law, rule or regulation of the United States or any other country; (v) any other party's access and use of the Portal with Your unique username, password or other appropriate security code.

## **7. Miscellaneous**

**7.1. General.** Affirm does not guarantee continuous, uninterrupted or secure access to the Portal, and operation of the Portal may be interfered with by numerous factors outside of Affirm's control. If any provision of these Terms is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. You agree that these Terms and all incorporated agreements may be assigned by Affirm in its sole discretion. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. Affirm's failure to act with respect to a breach by You or others does not waive Affirm's right to act with respect to subsequent or similar breaches. These Terms do not confer any rights, remedies or benefits upon any person other than You. Possible evidence of use of the Portal for illegal purposes will be provided to law enforcement authorities. These Terms are the entire agreement between You and Affirm with respect to the subject matter hereof and supersede any prior understandings or agreements (written or oral). Any provision that

is reasonably inferable to have been intended to survive or must survive in order to give proper effect to its intent (e.g., indemnity, general, any perpetual license, limitations on liability, disclaimers, representations and warranties, confidentiality, etc.) shall survive the expiration or termination of these Terms.

**7.2. Changes to the Terms.** Affirm may change these Terms at any time in accordance with the Merchant Agreement. Your use of the Portal constitutes Your agreement to be bound by these Terms, as they are amended from time to time.

**7.3. Termination.** You or we may suspend or terminate Your account or Your use of the Portal at any time, for any reason or for no reason. We may also block Your access to the Portal in the event that (a) You breach these Terms; (b) Affirm is unable to verify or authenticate any information You provide to Affirm; (c) Affirm believes that Your actions may cause financial loss or legal liability for Affirm or its customers; (d) Affirm is notified by Merchant that You are no longer acting as its authorized agent; or (e) or as otherwise provided herein or in another incorporated policy. You understand that any termination of Your account, by You or Affirm, may involve the permanent deletion of Your data. Affirm will not have any liability whatsoever to You for any suspension or termination.

**7.4. Governing Law.** This Agreement shall be governed by the laws of the State of California. Any disputes shall be governed according to the terms set forth in the Agreement.